



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** B&M Construction, Inc.--Reconsideration

**File:** B-246108.2

**Date:** November 13, 1991

Sebastian J. Ruggeri, Esq., Ruggeri & Ruggeri, for the protester.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where original protest, alleging that changed site conditions provided a basis for withdrawal of a bid rather than subsequently terminating the contract for default, was dismissed because it concerned matter of contract administration, request for reconsideration, focusing on bid withdrawal issue initially raised by protester in 1986, is untimely.

### DECISION

B&M Construction, Inc. requests reconsideration of our October 8, 1991, dismissal of its protest under contract No. 50-1320-6-17, awarded to B&M by the Department of Agriculture in 1986. Because B&M was a contract awardee that had been terminated for default, we interpreted B&M's lengthy submission discussing changed site conditions which it contended provided a basis for withdrawal of its bid, rather than termination for default, as a protest involving a matter of contract administration over which our Office generally has no jurisdiction. See 4 C.F.R. § 21.3(m)(1) (1991); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228.

We deny the request for reconsideration.

In its request for reconsideration, B&M emphasizes that it is protesting the agency's refusal to allow B&M to withdraw its bid, a matter over which our Office has jurisdiction. While we did not specifically discuss this aspect of the protest in our prior decision, it is not for consideration by our Office because it is untimely.

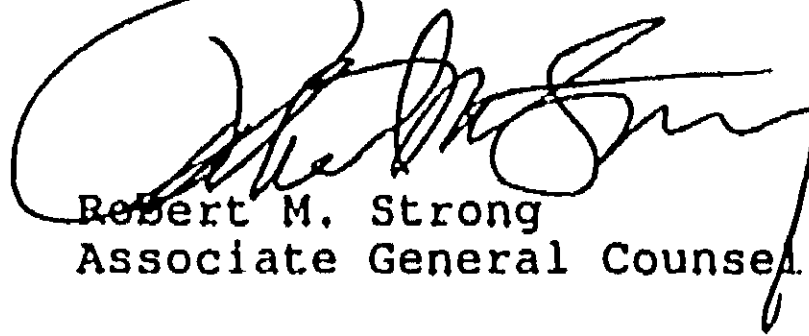
B&M submitted its bid under solicitation No. SCS-3-MA-86 on May 29, 1986. After becoming aware of what it considered changed site conditions, B&M sought to withdraw its bid on July 8, 1986. On July 28, B&M was awarded the contract and was notified that it could not withdraw its bid. On August 28, B&M was terminated for default. On December 12, 1989, B&M was notified by the agency that B&M owed procurement costs and liquidated damages on the defaulted contract. B&M appealed the matter to the Agriculture Board of Contract Appeals, which, on January 10, 1991, held that it did not have jurisdiction over the withdrawal issue. The protester's request for Board reconsideration of this decision was denied by letter of August 28, 1991. On October 7, 1991, B&M filed its protest with our Office, alleging that the contracting officer applied the wrong standard in denying the request to withdraw.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

Here, B&M acknowledges that its protest is untimely, but suggests that our Office should not dismiss it since the matter had been pending at the Board, was based in part on information only recently received, and concerns a significant issue. We disagree. The protester knew, or should have known, of the basis for its protest in 1986 when it unsuccessfully attempted to withdraw its bid. Accordingly, its filing an appeal at the Board of Contract Appeals, more than 3 years later, did not toll our timeliness rules or otherwise prevent the filing of a timely bid protest at our Office. See Michigan Data Storage, B-242219, Dec. 19, 1990, 90-2 CPD ¶ 507. Further, a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86.

Finally, B&M has neither shown good cause nor raised issues significant to the procurement system which would warrant our consideration of its protest, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.2(c)).

The request for reconsideration is denied.



Robert M. Strong  
Associate General Counsel